Capacity and Choice
and the Challenge to
Safeguarding Decision-Making

Brendan Kelly

1   **Capacity**

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Number 64 *of* 2015

Assisted Decision-Making (Capacity) Act 2015

(2) A person lacks the capacity to make a decision if he or she is unable—

(a) to understand the information relevant to the decision,

(b) to retain that information long enough to make a voluntary choice,

(c) to use or weigh that information as part of the process of making the decision, or

(d) to communicate his or her decision (whether by talking, writing, using sign language, assistive technology, or any other means) or, if the implementation of the decision requires the act of a third party, to communicate by any means with that third party.

Committee on the Rights of Persons with Disabilities
Eleventh session
31 March–11 April 2014

General comment No. 1 (2014)

Article 12: Equal recognition before the law

Committee on the Rights of Persons with Disabilities

Convention on the Rights
of Persons with Disabilities

Disability is not. as is commonly presented, an objective, scientific and naturally occurring phenomenon Disability is contingent on social and political contexts, as are the disciplines, professions and practices which play a dominant role in assessing mental capacity.

(i) The provision of support to exercise legal capacity should not hinge on disability assessments; new, non-discriminatory indicators of support needs are required in the provision of support to exercise legal capacity.

Reasons for endorsing or rejecting self-binding directives in bipolar disorder: a qualitative study of survey responses from UK service users

Tania Gergel*, Preety Das*, Gareth Owen, Lucy Stephenson, Larry Rifkin, Guy Hindley, John Dawson, Alex Ruck Keene

Summary

The endorsement by the majority of service user respondents of involuntary treatment on the basis of impaired decision-making abilities counters a widespread view, upheld by the UN Committee on the Rights of Persons with Disabilities, that psychiatric use of capacity assessment and involuntary treatment necessarily violate fundamental human rights.

increase autonomy. When assessing the ethical viability of self-binding directives, mental capacity, and involuntary treatment, human rights advocates need to take a broad range of service user views into account.
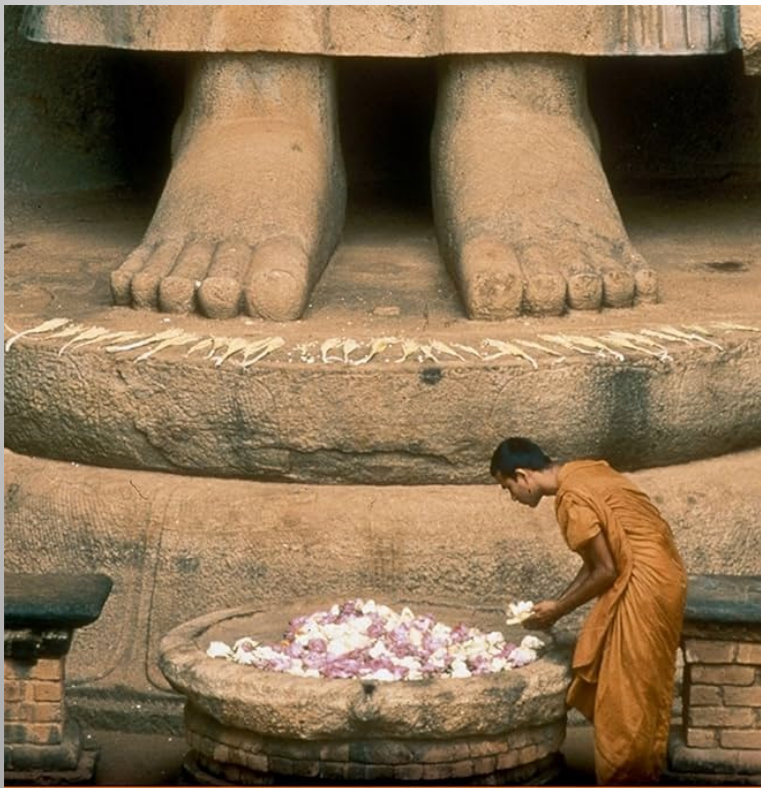
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THE FOUNDATIONS OF BUDDHISM

RUPERT GETHIN

Oxford University Press
1998

Self

EILÍS WARD

Síreacht *Longings for another Ireland*

Cork University Press
2021

HUMAN SUFFERING AND THE QUEST FOR COSMOPOLITAN SOLIDARITY: A BUDDHIST PERSPECTIVE
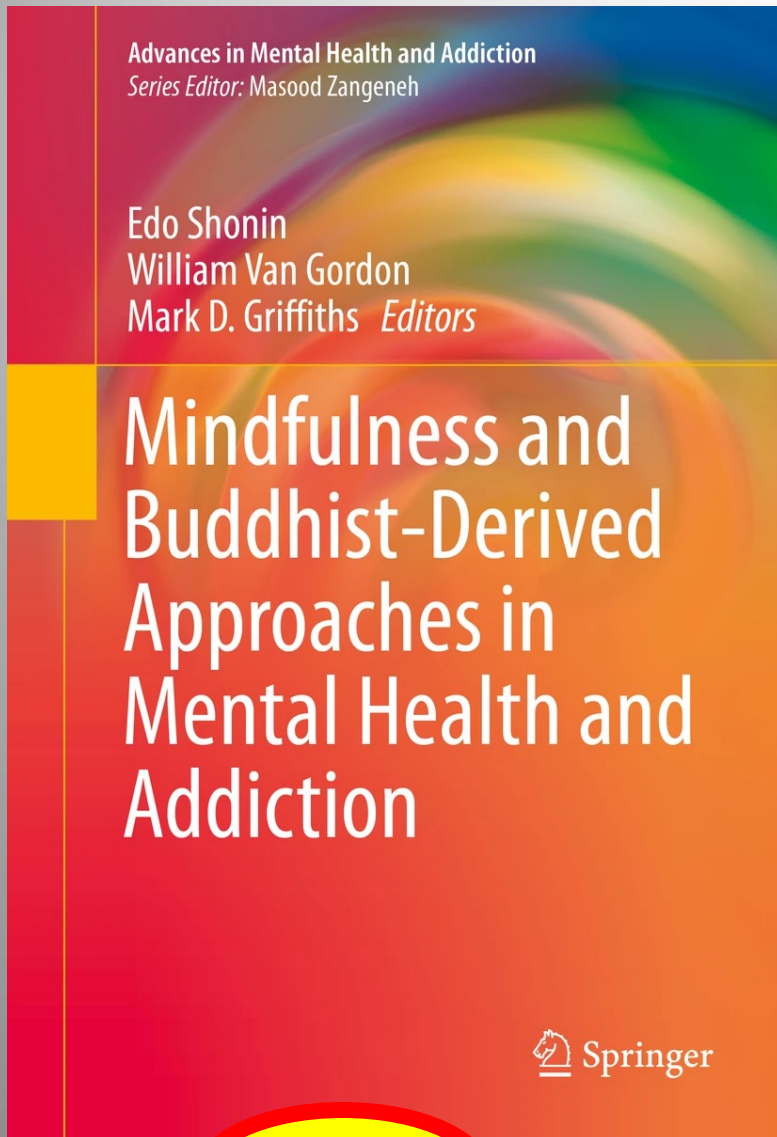
EILÍS WARD

beings and objects are empty of permanent, stable, separate identities. Self, too, is no more than a precipitate of our habitual ways of thinking, feeling and acting which, over time, become meshed into a sense of identity formed around a perceived stability. Our ownership of the idea of a stable self, with a personalised history, memory and consciousness is not just a habit of the mind, but is socially co-constituted and embedded as a principle in most legal systems. In contrast, Buddhism proposes a thoroughly relational ontology: the self is empty of permanent, stable essences and is a process in ever changing relationships of non-duality.

2014

A Sociology of No-Self: Applying Buddhist Social Theory to Symbolic Interaction

Matthew Immergut
Purchase College

Peter Kaufman
State University of New York

Although fraught with complexity, the self is a central phenomenon of discussion and analysis within sociology. This article contributes to this discourse by introducing the Buddhist ideas of anatta (no-self) and prattyasamutpāda (interdependence) as analytic frameworks to deconstruct and rethink the self within sociology. We argue that the sociological self, most clearly articulated by symbolic interactionism, is premised on a self-other dualism. This dualism leads to a conceptualization of the self as constantly threatened and anxious. Using these Buddhist concepts we propose an alternative interpretive schema, a sociology of no-self, for analyzing social interaction and understanding the roots of social angst.

Advances in Mental Health and Addiction
Series Editor: Masood Zangeneh

Edo Shonin
William Van Gordon
Mark D. Griffiths *Editors*

Mindfulness and Buddhist-Derived Approaches in Mental Health and Addiction

Springer

2016

Chapter 2
Compassion, Cognition and the Illusion of Self: Buddhist Notes Towards More Skilful Engagement with Diagnostic Classification Systems in Psychiatry

Brendan D. Kelly

DSM: 'Psychiatrists' Bible'

The teaching of nonself, however, warns against according too much reality both to the apparent self that is suffering and to other phenomena, such as the 'diagnosis' indicated by DSM or ICD. Both the self and the diagnosis are convenient labels that are useful for defined purposes (e.g. to guide treatment choices or facilitate research), but it would be a mistake to accord too much reality to them. Regrettably, it is com-

mon to see people accord far too much reality to the categories in DSM and ICD, with the result that diagnoses that were originally meant as research or treatment guidance tools come to be seen as concrete, immutable disease entities (Horowitz,

2002: 213). In other words, people confer too much reality on DSM and ICD diagnoses, eventually coming to regard them as real, stand-alone entities, rather than mere descriptions that are useful for certain purposes (e.g. testing treatments for specific sets of symptoms) but can be actively harmful if misused (e.g. disempowering people, ignoring the uniqueness of individualised distress, dominating the individual's self-image).

Ocean of Suffering, Ocean of Compassion: Person, Environment, Self, and World in Social Work and Zen Buddhism

Siddhesh Mukerji

Mutuality

I use the term *mutuality* to describe the emphasis throughout this study's interviews on a spirit of reciprocity in the process of responding to suffering. Interviewees clarified that they see responding to suffering not as a hierarchical arrangement in which one being is "the helper" and the other "the helped," but rather as a mutual exchange of time, presence, and care. The person,

Mutuality, as a concept in this study, includes not only those whose efforts we support, but also those whose actions we oppose. Several interviewees underscored the importance of taking a clear and strong stand against oppression. However, this stance integrates an acknowledgement of non-duality; that the one who opposes and the one opposed are not-two.

Mental Capacity in Relationship

Decision-Making, Dialogue, and Autonomy

Camillia Kong

2017

Rethinking Capacity

This book has argued that the context of impairment demands a *relational* concept of mental capacity. Capacity draws upon a range of implicit values and goods; chief amongst them is the importance of perceptual and autonomy competencies constitutive of temporally extended agency, all of which are promoted through surrounding relationships and supportive environments. Capacity understood as such results in a profound ethical reorientation, where the burden of practical competency shifts away from the individual in question, towards the ethical-dialogical stance of her surrounding relationships, of the capacity assessor or other intervening professionals. We might see this as a radical departure from current medico-juridical practice, but what is ethically at stake in certain legal cases can be captured more accurately through this relational lens of capacity.

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safeguardingday.ie

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I CHOOSE WHO HELPS

Safeguarding IRELAND

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September 18, 2023

National Safeguarding Office
Annual Report 2022
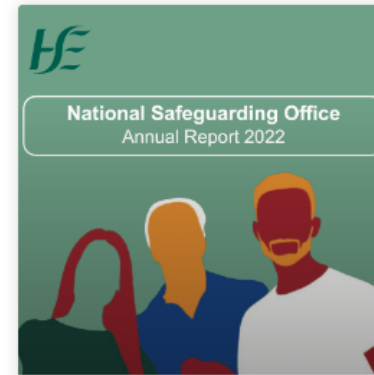
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June 15, 2023

Our Mission

Safeguarding Ireland promotes safeguarding of vulnerable adults to protect them from all forms of abuse by persons, organisations and institutions and to develop a national plan for promoting their welfare.

Number 64 _of_ 2015

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Assisted Decision-Making (Capacity) Act 2015

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1. **Decision-making assistant**

2. **Co-d**

Blurring of the boundaries of 'self'

Decision-making representative

These decision-making supporters must act in accordance with the will and preferences of the person
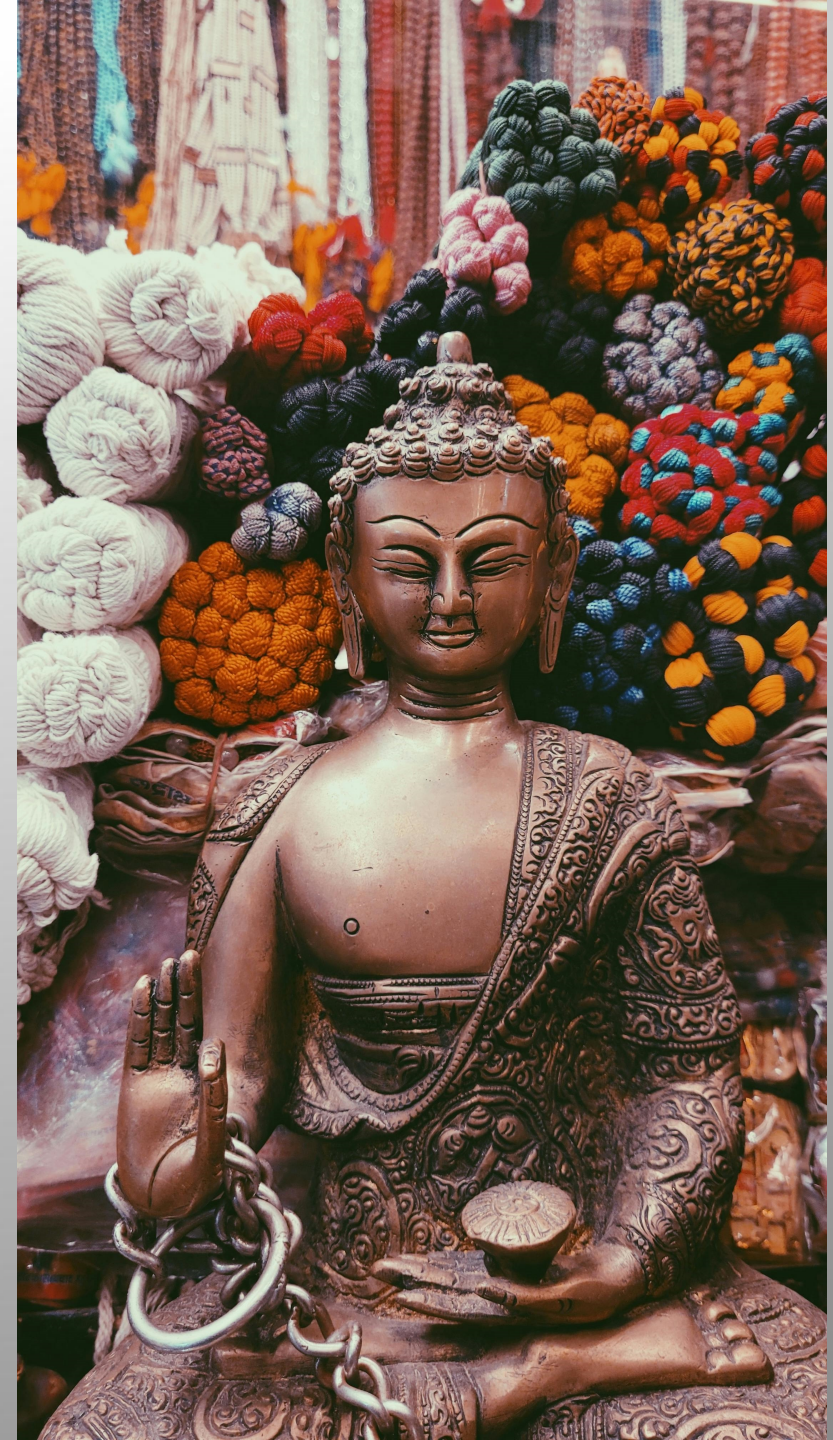- *even if the person lacks capacity*

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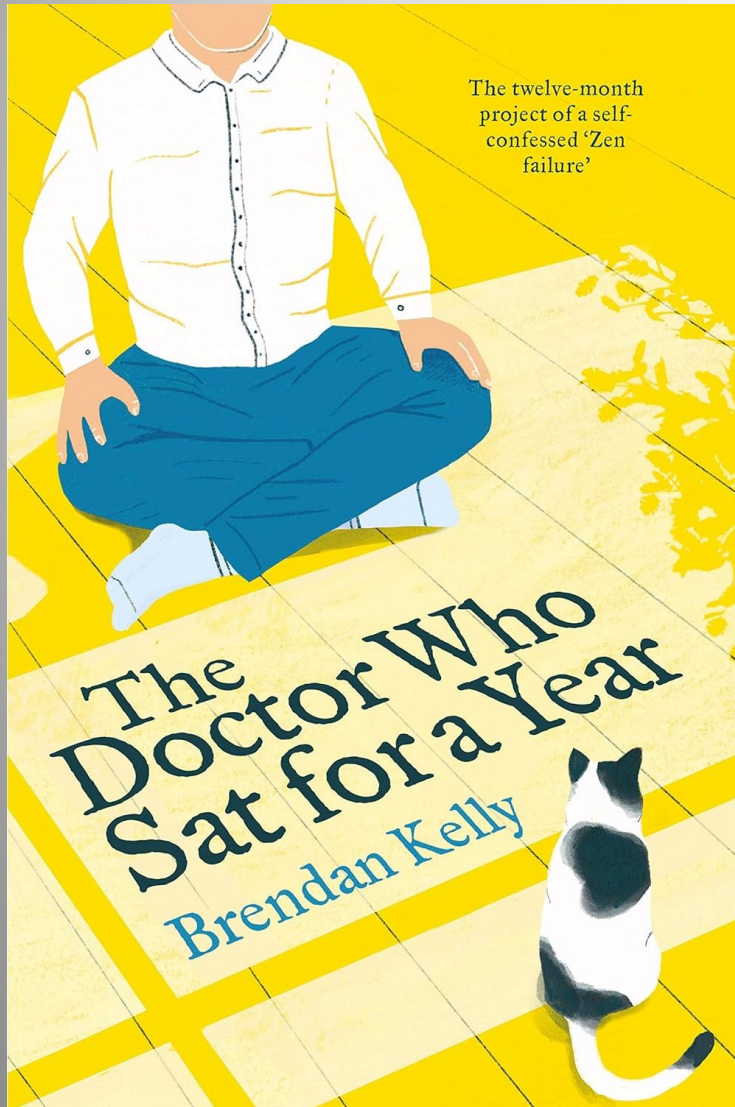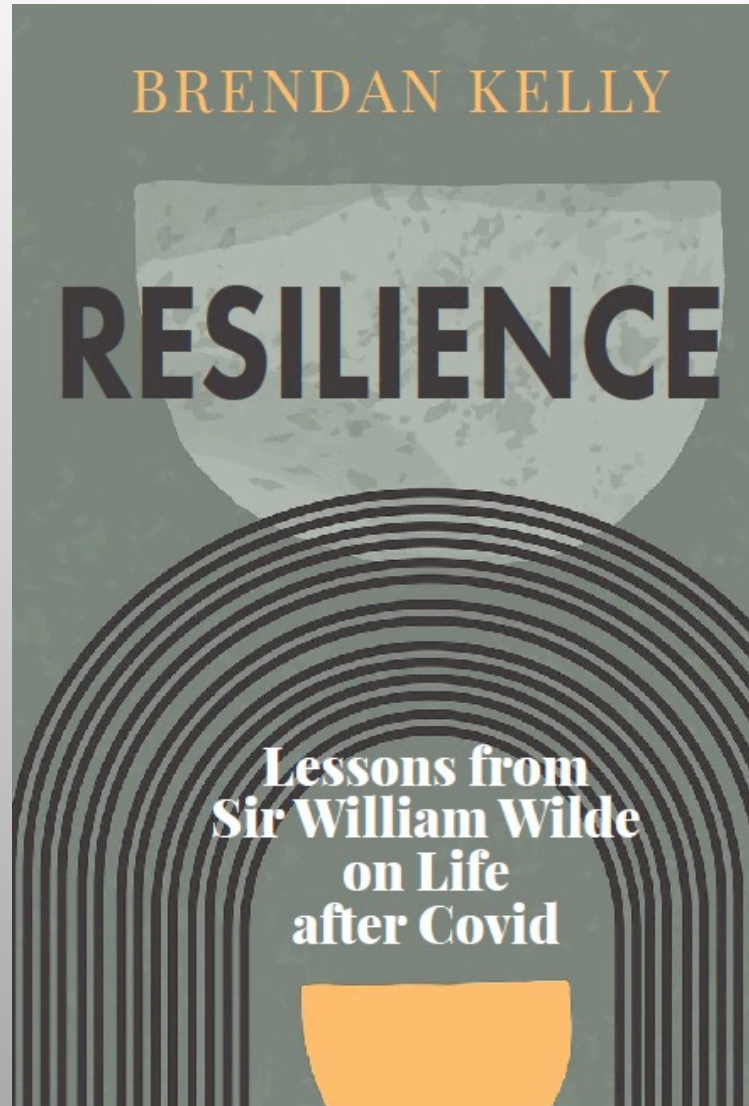Pexels/Rishikesh

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2019   **2023**   **2024**